

Attachment 2
Applicable or Relevant and Appropriate Regulations (ARARs)

This table contains a listing of potential Federal and State ARARs for the Gold King Mine Release Site Removal Action

Standard, Requirement, Criteria, or Limitation	Citation	Description	Applicable or Relevant and Appropriate	Comments
ACTION SPECIFIC				
FEDERAL				
Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (RCRA Subtitle D)	40 C.F.R. § 257.3-1(a) (Floodplains); 40 C.F.R. § 257.3-7(b) (Air)	Regulates the generation, storage, handling and disposal of solid waste.	Applicable	RCRA Subtitle D specifically regulates non-hazardous solid waste; portions of these regulations may be applicable if it is decided to dispose of water treatment residuals on-site.
Hazardous Materials Transportation Act	(49 U.S.C. §§ 5101–5128; 49 C.F.R. §§107, 171–177)	Regulates transportation of hazardous materials.	Applicable	Applicable to the transportation of water treatment residuals and waste rock on-site under the proposed removal action.
STATE				
Colorado Water Quality Control Act, and Colorado Discharge Permit System Regulations	C.R.S. § 25-8-101 <i>et seq.</i> ; ⁵ C.C.R. § 1002.61	Establishes program for permitting discharges of contaminates into waters of the United States within Colorado	Applicable	The substantive provisions of the CPDES program are potentially applicable to point source discharges under the proposed removal action. (i.e., potential discharges from the interim treatment facility)
Colorado Solid Waste Disposal Sites and Facilities Act	6 C.C.R. § 1007-2, pursuant to C.R.S. § 30-20-100.5 <i>e seq.</i>	Establishes standards for the licensing, locating, constructing, and operating solid waste disposal facilities.	Applicable	This regulation is specifically for non-hazardous solid waste. These regulations may be applicable if it is decided to dispose of water treatment residuals on-site.
Colorado Water Quality Control Act. Storm Water Discharge Regulations	5 C.C.R. § 1002-61	Regulates discharge of storm water during construction activities.	Applicable	Best Management Practices will be implemented to control storm water discharges or run-off during Removal Activities.
Colorado Air Pollution Prevention and Control Act	5 C.C.R. § 1001-3, pursuant to C.R.S. § 25-7-101 <i>et seq.</i>	Regulates fugitive emissions during construction.	Applicable	On-site Superfund actions do not require permits; however, fugitive emissions will be controlled by implementing dust control during any dirt moving or construction activities.
Colorado Noise Abatement Statute	C.R.S. § 25-12-101 <i>et seq.</i>	Regulates permissible noise levels.	Applicable	Noise controls will be implemented throughout the Removal Action; most notably work is expected to occur between 0700 and 1900 hrs.

Colorado Mined Land Reclamation Regulations	2 C.C.R. § 407-1, pursuant to C.R.S. § 34-32-101 <i>et seq.</i>	Regulates reclamation of mining activities.	Relevant and Appropriate	The proposed removal action is similar to reclamation at a mining operation and the substantive provisions of these regulations will be incorporated as appropriate. The reclamation provisions of these regulations are relevant and appropriate to proposed removal actions involving plugging of adits, water control measures and treatment and disposal of waste piles...
Colorado Noxious Weed Act	8 C.C.R. § 1206-2, pursuant to C.R.S. § 35-5.5-101 <i>et seq.</i>	Defines and sets forth noxious weed management regulations.	Applicable	
Colorado Air Quality Control Act	5 C.C.R. §§ 1001-1, 3, 8, 10	Establishes emissions standards for PM10 and lead. Pursuant to the Colorado Air Pollution Prevention and Control Act, applicants for construction permits are required to evaluate whether the proposed source will exceed NAAQS. Applicants are also required to evaluate whether the proposed activities would cause the Colorado ambient standard for PM10 to be exceeded. Colorado regulates fugitive emissions through Regulation No. 1.	Applicable	Compliance with applicable provisions of the Colorado air quality requirements will be achieved by adhering to a fugitive emissions control plan prepared in accordance with Regulation No. 1. The proposed removal action is not projected to exceed the emission levels for lead, although some lead emissions may occur.

Standard, Requirement, Criteria, or Limitation	Citation	Description	Applicable or Relevant and Appropriate	Comments
LOCATION SPECIFIC				
FEDERAL				
Protection of Floodplains	E.O. 11988 §§ 1, 2(a)(2) (Floodplain Management)	Requires federal agencies to take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains. Requires federal agencies to consider alternatives to avoid, to the extent possible, adverse effects and incompatible development in the floodplain. Design or modify its action in order to minimize potential harm to or within the floodplain.	To Be Considered	Presence of Floodplains designated as such on a map. Federal actions that involve potential impacts to, or take place within, floodplains
Protection of Wetlands	E.O. 11990 §§ 1(a), 2(a)	Requires federal agencies to take action to minimize the destruction, loss or degradation of wetlands and to preserve and enhance beneficial values of wetlands. Requires federal agencies to avoid undertaking construction located in wetlands unless: (1) there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use.	To Be Considered	Presence of Wetlands. Federal actions that involve potential impacts to, or take place within, wetlands
Clean Water Act Section 404	33 U.S.C. § 1251 <i>et seq.</i> ; 40 C.F.R. §§ 230, 231	Requires federal agencies to avoid, to the extent possible, adverse impacts associated with destruction or loss of wetlands. Regulates the discharge of dredged or fill material into waters of U.S. Consultation with the Regional Response Team required.	Applicable	If wetlands are present these may be applicable. If discharge of dredge and fill material is necessary these are applicable.
Endangered Species Act	16 U.S.C. § 1531 <i>et seq.</i> ; 50 C.F.R. § 402.	Protects endangered species and threatened species and preserves their habitat. Requires coordination with federal agencies for mitigation of impacts.	Applicable	Threatened and endangered species have been identified in the Animas and San Juan rivers well downstream from the Gold King Mine and the activities proposed in the action memo are not expected to impact those species. EPA will coordinate with the appropriate federal and state agencies.

Fish and Wildlife Coordination Act	16 U.S.C. § 661 <i>et seq.</i>	Requires coordination with federal and state agencies on activities affecting/modifying streams or rivers if the activity has a negative impact on fish or wildlife. Requires coordination with federal and state agencies to provide protection of fish and wildlife in water resource development programs; regulates actions that impound, divert, control, or modify any body of water.	To Be Considered	If it appears that the proposed removal activities may impact wildlife resources, EPA will coordinate with both the U.S. Fish and Wildlife Service and the Colorado Department of Natural Resources.
National Historic Preservation Act (NHPA)	54 U.S.C. § 300101 <i>et seq.</i> ; 36 C.F.R. §§ 63, 65, 800	Requires the preservation of historic properties included in or eligible for the National Register of Historic Places and to minimize harm to National Historic Landmarks.	Applicable	If historical or cultural features are discovered or identified, EPA will comply with the substantive provisions of the NHPA to the extent practicable.
The Historic and Archeological Data Preservation Act of 1974	54 U.S.C. §312501 <i>et seq.</i>	Establishes procedures to provide for preservation of historical and archeological data which might be destroyed through alteration of terrain as a result of a federal construction project or a federally licensed activity program.	Applicable	If scientific, prehistoric, or archeological features are identified in areas in an area where the terrain is to be altered, EPA will preserve the data related to these features to the extent practicable.
STATE				
Colorado Non-game, Endangered, or Threatened Species Act	C.R.S § 33- 2- 101 <i>et seq.</i>	Protects endangered and threatened species and preserves their habitats. Requires coordination with the Division of Wildlife if remedial activities impact on state-listed endangered/threatened species or their habitat.	Applicable	Standards for regulation of non-game wildlife and threatened and endangered species.
Colorado Natural Areas	C.R.S. § 33- 33-101 <i>et seq.</i>	The Colorado Natural Areas Program maintains a list of plant species of special concern for the State. Coordination with Division of Parks and Outdoor Recreation is recommended if activities will impact listed species.	Applicable	EPA will coordinate with the Division if it encounters plant species of special concern.
State Solid Waste Disposal Sites and Facilities Act	C.R.S. § 30- 20- 101-118; 6 C.C.R. § 1007-2	Establishes location standards for solid waste management facilities	Applicable	The proposed removal activities may include the siting of a solid waste management unit.